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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

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10 DISCOVERORG DATA, LLC,

11 Plaintiff,

12 v.

13 LUMEN21, INC.,

14 Defendant.

15 Case No. 3:19-cv-05250

COMPLAINT

JURY DEMAND

16
17 Plaintiff DiscoverOrg Data, LLC (“DiscoverOrg”), for its complaint against
18 Lumen21, Inc. (“Lumen21”), alleges as follows:

19
PARTIES

20 1. DiscoverOrg is a Delaware limited liability company with its principal
21 place of business in Vancouver, Washington.

22 2. Lumen21 is a Nevada corporation with a principal place of business in
23 the State of California and does business in the State of Washington.

24
JURISDICTION AND VENUE

25 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332,
26 as the parties are completely diverse in citizenship and the amount in controversy
27 exceeds \$75,000, and separately under 18 U.S.C. §§ 1331 and 1338(a) and (b)
28 because DiscoverOrg asserts claims arising under Federal Law. This court also has

1 supplemental jurisdiction for the state law claims pursuant to 28 U.S.C. § 1367.

2 4. This court has personal jurisdiction over Lumen21, and venue is properly
 3 laid in this district court pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400(a), in
 4 that Lumen21 transacts business in this state and has committed tortious acts
 5 within this state. *See* RCW 4.28.185.

6 5. Additionally, this Court has personal jurisdiction over Lumen21 because
 7 Lumen21 has consented to the jurisdiction of the courts of this State in the contract
 8 at issue.

9 6. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because
 10 Lumen21 has agreed that all claims in connection with the contract at issue may be
 11 brought in the courts of this State.

12 FACTS AND ALLEGATIONS

13 A. DiscoverOrg's Database

14 7. DiscoverOrg is a provider of business-to-business ("b2b") marketing
 15 data, which it delivers to clients via a password-secured, online graphical user
 16 interface. DiscoverOrg uses technology, computers, and electronic communication
 17 systems to provide subscribers with to its database of marketing information
 18 profiling businesses in the United States and globally. DiscoverOrg has been
 19 recognized as an industry leader in sales and marketing intelligence. The depth,
 20 breadth, and accuracy of DiscoverOrg's database is unrivaled in the marketplace.

21 8. DiscoverOrg has invested tens of millions of dollars to develop and
 22 maintain the infrastructure and content of its database and ensure that it is of the
 23 highest quality. DiscoverOrg employs hundreds of research analysts focused on
 24 building, managing, and updating DiscoverOrg's database, in order to deliver
 25 timely and comprehensive data being made available to DiscoverOrg's clients.
 26 DiscoverOrg has expended substantial labor, time, resources, effort, and money to
 27 select, gather, collect, organize, generate, arrange, and disseminate the timely and
 28 continuously updated information DiscoverOrg provides in its database. In total

1 DiscoverOrg employs more than 1,000 people and has made significant investment
 2 in developing and purchasing software, hardware and other equipment to
 3 continuously update and support the accuracy and comprehensiveness of its
 4 database. DiscoverOrg's database exhibits DiscoverOrg's decisions and input as to
 5 the selection, arrangement, orchestration, compilation, and presentation of the
 6 organizational charts, contacts, and other information collected and assembled by
 7 DiscoverOrg's analysts.

8 9. DiscoverOrg's database is valuable to companies like Lumen21, who
 9 benefit from the use of detailed information in their efforts to market their own
 10 products and services. DiscoverOrg has licensed subscription access to its database
 11 to approximately 4,000 companies, who pay licensing fees for the right to access
 12 and use DiscoverOrg's database.

13 10. The value of DiscoverOrg's database is related to and dependent upon
 14 its proprietary and non-public nature. DiscoverOrg takes steps to protect the
 15 security of the information contained in its database. For example, DiscoverOrg
 16 limits access to its database to only authorized users pursuant to restrictive license
 17 agreements. DiscoverOrg's database is password-protected, and DiscoverOrg
 18 utilizes mail monitoring and list protection to further secure and ensure the
 19 integrity of DiscoverOrg's database.

20 **B. Lumen21 Enters Into a License Agreement with DiscoverOrg**

21 11. On or around August 16, 2016, Lumen21 entered into a license
 22 agreement with DiscoverOrg to access and use certain data in its database,
 23 comprised of an order form (the "Order Form", attached hereto as Exhibit A) and
 24 the End User License Agreement (the "EULA"), incorporated by reference into
 25 the Order Form (together, the "Agreement"). A copy of the EULA is attached as
 26 Exhibit B.

27 12. The initial term of the Agreement ran from August 16, 2016 through
 28 August 15, 2017 (the "Initial Term"). The licensing fees to be paid during the

1 Initial Term by Lumen21 totaled \$15,000.00. Ex. A; Ex. B § 7.1.

2 13. In the Agreement, “Licensee” means Lumen21. The EULA states
 3 “Licensee shall pay all fees stated in the Ordering Document (the “Subscription
 4 Fee”).” Ex. B § 3. The Order Form identifies custom payment terms as follows:
 5 “Quarterly payments of \$3,750 will be due as follows: Net 30 from Date of
 6 Execution; November 15, 2016; February 15, 2017; May 15, 2017.” Ex. A, 2.

7 14. The EULA also provides for continuous service at the end of the Initial
 8 Term, but only if neither party opts out of the automatic extension:

9 “The Initial Term of this Agreement is specified in the Ordering
 10 Document (and, together with all periods of extension, the
 “Term”). On the last day of the Term, the Term will extend for a
 11 successive period equal to the length of the Initial Term, unless
 12 either party notifies the other in writing at least ninety (90) days
 13 prior to the end of the then-current Term of its intent that the
 14 Term not so extend. In the event that the Term is so extended, the
 15 Subscription Fee for the period of such extension shall equal the
 16 Subscription Fee applicable to the period of equal length
 immediately preceding such period such extension, plus 10% of such
 fee.”

17 Ex B § 7.1.

18 15. The Agreement further provides that “Upon expiration or termination
 19 of this Agreement, Licensee shall cease accessing the Licensed Materials or using
 20 the Licensed Materials in any way,” (*Id.* § 4.2) and that “Upon expiration or
 21 termination of this Agreement, Licensee agrees to destroy any and all copies of
 22 Licensed Materials and any information it has obtained from the Licensed
 23 Materials, whether in hard copy or electronic form.” *Id.* § 7.2.

24 16. The Agreement also provides that “In the event of any dispute arising
 25 under this agreement, the prevailing party shall be entitled to recover its reasonable
 26 costs and expenses actually incurred in endeavoring to enforce the terms of this
 27 Agreement, including reasonable attorney fees.” *Id.* § 13.1.

17. On August 16, 2017, the Agreement extended for another 12-month term (the “Renewal Term”) according to its terms, because neither party provided written notice of its intent that the Term not so extend.

C. Lumen21 Breaches Agreement with DiscoverOrg

18. Upon information and belief, Lumen21 disputes the validity of the extension of the Term of the Agreement. Lumen21 has failed to make the final quarterly payment associated with the Initial Term of the Agreement (\$3,750) as well as the full subscription fee associated with the Renewal Term (\$16,500).

19. Non-payment of the subscription fee is a material breach of the Agreement.

D. Lumen21 Continued Accessing and Using the DiscoverOrg Database and Data Obtained from the DiscoverOrg Database in the Renewal Term

20. Despite Lumen21's non-payment of the subscription fee in the Initial Term and Renewal Term, Lumen21 continued accessing and using the Licensed Materials after the Initial Term.

21. In the Renewal Term, Lumen21 performed over 150 unique search actions within the DiscoverOrg database and exported over 230,000 contact records from the DiscoverOrg database through 39 distinct export actions.

22. Lumen21 has continued to use data obtained from the DiscoverOrg database for its marketing and sales efforts despite failing to meet its payment obligations outlined in the Agreement.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

23. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 through 22.

24. Lumen21 entered into the Agreement with DiscoverOrg, which was duly made and binding on both parties.

25. Lumen21 breached the Agreement by failing to make timely payments to

1 DiscoverOrg in accordance with the payment terms of the Agreement.

2 26. DiscoverOrg has been damaged by Lumen21 because it has not been
 3 compensated for Lumen21's access and use of DiscoverOrg's software and data.

4 27. By reason of the foregoing, Lumen21 is liable to DiscoverOrg for
 5 damages in an amount of the subscription fee owed for the Renewal Term and the
 6 remaining outstanding balance from the Initial Term of the Agreement and,
 7 pursuant to the terms of the Agreement, DiscoverOrg's reasonable attorney fees.

8 **SECOND CLAIM FOR RELIEF**

9 **(Breach of Contract)**

10 28. This claim is pled in the alternative to DiscoverOrg's First Claim for
 11 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1
 12 through 27.

13 29. Lumen21 entered into the Agreement with DiscoverOrg, which was duly
 14 made and binding on both parties.

15 30. Lumen21 breached the Agreement by failing to remove all data that
 16 Lumen21 obtained from DiscoverOrg after the expiration of the Initial Term of the
 17 Agreement.

18 31. Lumen21 also breached the Agreement by continuing to access and use
 19 Licensed Materials after the expiration of the Initial Term of the Agreement.

20 32. DiscoverOrg has been damaged by Lumen21's aforementioned actions
 21 through the lost opportunity to realize licensing revenue and the diminution of the
 22 market value of its proprietary information.

23 33. By reason of the foregoing, Lumen21 is liable to DiscoverOrg for
 24 damages in an amount of the subscription fee owed for the Renewal Term, and the
 25 remaining outstanding balance from the Initial Term of the Agreement, and the
 26 costs and expenses incurred by DiscoverOrg in enforcing the Agreement, including
 27 its reasonable attorney fees.

28

THIRD CLAIM FOR RELIEF

(Theft of Trade Secrets - 18 U.S.C. § 1832 *et seq.*)

34. This claim is pled in the alternative to DiscoverOrg's First Claim for Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 through 33.

35. DiscoverOrg gathers, organizes, generates, collects, and assembles in-depth, commercially-valuable information (including reporting structures, contact information, and other data) expending substantial time, labor, and expense. DiscoverOrg's database and the information contained therein comprise a compilation of business information. Information from DiscoverOrg's database is used in interstate commerce.

36. The compilation of information in DiscoverOrg's database derives independent economic value from not being generally known to, and not being readily ascertainable through proper means by, those who are not licensed by DiscoverOrg to access the database. Non-licensees can obtain economic value from the disclosure or use of the information in DiscoverOrg's database.

37. DiscoverOrg has taken reasonable measures to protect and keep the information in its database secret by limiting access to those customers who agree to the terms of the access in the licensing agreement and requiring password authentication to access the database through its secure online portal. DiscoverOrg also does its best to monitor access to the database and use of the information to further ensure its security.

38. Lumen21 used improper means, including unauthorized access to a protected computer, to obtain access to and acquire information from DiscoverOrg's database. Lumen21 knew or had reason to know at the time it obtained that it was not authorized to access or use DiscoverOrg's proprietary data because its license had expired.

39. Lumen21 attempted to and did knowingly and without authorization

1 download, copy, and duplicate information from DiscoverOrg's proprietary
 2 database. Lumen21 received and possessed information from DiscoverOrg's
 3 proprietary database that Lumen21 knew to have been converted without
 4 authorization.

5 40. Lumen21 willfully and maliciously misappropriated DiscoverOrg's trade
 6 secrets by continuing to use login credentials after the expiration of the Initial Term
 7 of the Agreement, accessing DiscoverOrg's computer systems without
 8 authorization, copying the information contained therein, and using that
 9 information for Lumen21's financial gain.

10 41. DiscoverOrg has been damaged by Lumen21's actions through the lost
 11 opportunity to realize licensing revenue and the diminution of the market value of
 12 its proprietary information. Lumen21 has been unjustly enriched by the use of
 13 valuable marketing and sales information without paying compensation and
 14 through the consummation of business transactions that would not have occurred
 15 without use of the stolen information. DiscoverOrg would, in the alternative, be
 16 entitled to a reasonable royalty for Lumen21's use of the information.

17 42. By reason of the foregoing, Lumen21 is liable to DiscoverOrg for
 18 damages and unjust enrichment or a reasonably royalty, in an amount to be proven
 19 at trial. DiscoverOrg is also entitled to exemplary damages and its reasonable
 20 attorney fees. Finally, DiscoverOrg is entitled to an injunction preventing Lumen21
 21 from continuing to possess or use information obtained from DiscoverOrg's
 22 database.

23 **FOURTH CLAIM FOR RELIEF**

24 **(Misappropriation of Trade Secrets - RCW 19.108.010 *et seq.*)**

25 43. This claim is pled in the alternative to DiscoverOrg's First Claim for
 26 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1
 27 through 42.

28 44. By reason of the foregoing, Lumen21 is liable to DiscoverOrg for

1 damages and unjust enrichment or a reasonably royalty, in an amount to be proven
 2 at trial. DiscoverOrg is also entitled to exemplary damages and its reasonable
 3 attorney fees. Finally, DiscoverOrg is entitled to an injunction preventing Lumen21
 4 from continuing to possess or use information obtained from DiscoverOrg's
 5 database.

6 **FIFTH CLAIM FOR RELIEF**
 7 **(Misappropriation)**

8 45. This claim is pled in the alternative to DiscoverOrg's First Claim for
 9 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1
 10 through 44.

11 46. DiscoverOrg gathers, organizes, generates, collects, and assembles in-
 12 depth, commercially-valuable information (including reporting structures, contact
 13 information, and other data) expending substantial time, labor, and expense.

14 47. Lumen21 intentionally and without permission, accessed and copied
 15 information from DiscoverOrg's database, used the stolen information for its own
 16 financial gain, and profited therefrom. Lumen21 has taken a "free-ride" on
 17 DiscoverOrg's skill, labor, and costly and substantial efforts in creating its
 18 commercially-valuable database.

19 48. Lumen21's actions have damaged DiscoverOrg in the form of lost profits
 20 and diminution of the market value of its database. By reason of the foregoing
 21 misappropriation of DiscoverOrg's data, Lumen21 is liable to DiscoverOrg for
 22 compensatory damages including wrongfully derived revenues in an amount to be
 23 proven at trial.

24 **SIXTH CLAIM FOR RELIEF**
 25 **(Copyright Infringement)**

26 49. This claim is pled in the alternative to DiscoverOrg's First Claim for
 27 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1
 28 through 48.

1 50. DiscoverOrg's database is an original work of authorship containing
2 copyrightable subject matter for which copyright protection exists under the
3 Copyright Act. DiscoverOrg has filed for copyright registration with the United
4 States Copyright Office in compliance with 17 U.S.C. § 101 *et seq.* DiscoverOrg's
5 copyright was registered December 27, 2010 with registration number
6 TX0007487999.

7 51. As owner of all right, title, and interest in and to the copyrighted works,
8 DiscoverOrg is entitled to all the exclusive rights and remedies accorded by Section
9 106 of the Copyright Act to a copyright owner, including the exclusive rights to
10 reproduce the copyrighted works and to sell non-exclusive licenses to those
11 copyrighted works.

12 52. Lumen21 has gained access to and made and used copies of
13 DiscoverOrg's copyrighted material without authorization or license from
14 DiscoverOrg. Lumen21 used those copies for Lumen21's financial gain without
15 compensating DiscoverOrg. In doing so, Lumen21 has violated DiscoverOrg's
16 exclusive rights of reproduction and distribution.

17 53. At all relevant times, Lumen21 had the responsibility and the ability to
18 supervise and monitor the actions its employees and agents, whose actions were
19 performed on its behalf and for its direct financial benefit and were within the scope
20 of their employment for Lumen21.

21 54. With knowledge of the infringing activity, Lumen21 induced, caused,
22 facilitated, encouraged, and/or materially contributed to the infringing conduct.

23 55. Lumen21's acts of infringement have been willful and intentional, in
24 disregard of and with indifference to the rights of DiscoverOrg.

25 56. As a direct and proximate results of the foregoing acts, DiscoverOrg has
26 been and will continue to be harmed. DiscoverOrg is entitled to its actual damages,
27 including any and all profits due to Lumen21's wrongful conduct, or statutory
28 damages. DiscoverOrg is also entitled to its costs, including reasonable attorney

1 fees.

2 **SEVENTH CLAIM FOR RELIEF**

3 **(Violation of the Computer Fraud and Abuse Act)**

4 57. This claim is pled in the alternative to DiscoverOrg's First Claim for
 5 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1
 6 through 56.

7 58. DiscoverOrg's computer system and database comprise "protected
 8 computers" within the meaning of 18 U.S.C. § 1030(e)(2).

9 59. Lumen21, knowingly and with intent to defraud DiscoverOrg, accessed
 10 DiscoverOrg's protected computers without authorization and thereby obtained
 11 valuable information from such protected computers using interstate
 12 communication.

13 60. Lumen21's actions constitute violations of 18 U.S.C. §§ 1030(a)(2)(C)
 14 and 1030(a)(4).

15 61. Lumen21's unauthorized access of DiscoverOrg's computer system has
 16 caused loss to DiscoverOrg of more than \$5,000 in value.

17 62. By reason of the foregoing, DiscoverOrg is entitled to compensatory
 18 damages in an amount to be determined at trial pursuant to 18 U.S.C. § 1030(g).

19 **EIGHTH CLAIM FOR RELIEF**

20 **(Trespass to Chattels)**

21 63. This claim is pled in the alternative to DiscoverOrg's First Claim for
 22 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1
 23 through 62.

24 64. DiscoverOrg owns a computer system that houses its proprietary
 25 electronic database. DiscoverOrg grants password access to this system only to its
 26 clients.

27 65. Lumen21 intentionally accessed DiscoverOrg's computer system
 28 without authorization and thereby interfered with DiscoverOrg's possessory

1 interest in its computer systems.

2 66. As a result of Lumen21's trespass to DiscoverOrg's computer system,
3 Lumen21 caused damage to DiscoverOrg's database including, but not limited to,
4 the diminution in the market value of DiscoverOrg's computerized data and
5 information stored on such computer system. By reason of the foregoing, Lumen21
6 is liable to DiscoverOrg for compensatory damages in an amount to be proven at
7 trial.

NINTH CLAIM FOR RELIEF

(Unjust Enrichment)

10 67. This claim is pled in the alternative to DiscoverOrg's First Claim for
11 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1
12 through 66.

13 68. Through Lumen21's wrongful actions described herein, Lumen21 has
14 been unjustly enriched through the use of DiscoverOrg's commercially-valuable
15 data without compensation to DiscoverOrg.

16 69. Lumen21 is therefore liable to DiscoverOrg to the extent of such unjust
17 enrichment in an amount to be determined at trial.

TENTH CLAIM FOR RELIEF (Negligence)

20 70. This claim is pled in the alternative to DiscoverOrg's First Claim for
21 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1
22 through 69.

23 71. At all relevant times, Lumen21 was under a duty to take reasonable care
24 in training and supervising its employees and other agents acting on its behalf.

25 72. It was foreseeable that the failure to train and supervise employees and
26 other agents regarding appropriate methods for obtaining sales and marketing
27 information for the benefit of Lumen21 would harm a third party such as
28 DiscoverOrg.

1 73. Lumen21 breached its duty when it failed to train and supervise its
2 employees by allowing them to carry out the unlawful conduct set forth in this
3 complaint. In particular, Lumen21 failed to properly implement and enforce a
4 policy prohibiting such conduct, as would be required of a reasonable entity.

5 74. As a direct and proximate result of Lumen21's negligence, DiscoverOrg
6 has suffered damage in the form of lost profits and diminution of the market value
7 of its database. Lumen21 is liable to DiscoverOrg for compensatory damages in an
8 amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, DiscoverOrg prays for the following relief:

1. entry of judgment in its favor and against Lumen21 on all counts;

2. entry of judgment in its favor against Lumen21 on all of its Claims for

Relief that Lumen21's unlawful conduct was willful and knowing;

3. as to its First Claim for Relief, the subscription fee owed for the Renewal Term and the remaining outstanding balance from the Initial Term of the Agreement and, pursuant to the terms of the Agreement, DiscoverOrg's reasonable attorney fees; or

4. in the alternative to the First Claim for Relief, as to its Second Claim for Relief, the subscription fee owed for the Renewal Term and the remaining outstanding balance from the Initial Term of the Agreement and, pursuant to the terms of the Agreement, DiscoverOrg's costs and expenses including reasonable attorney fees;

5. in the alternative to the First Claim for Relief, as to its Third Claim for Relief, its actual damages and unjust enrichment or a reasonably royalty, in an amount to be proven at trial, exemplary damages, and its reasonable attorney fees;

6. in the alternative to the First Claim for Relief, as to its Fourth Claim for Relief, its actual damages and unjust enrichment or a reasonably royalty, in an amount to be proven at trial, exemplary damages, and its reasonable attorney fees;

1 7. in the alternative to the First Claim for Relief, as to its Fifth Claim for
2 Relief, compensatory damages in an amount to be proven at trial;

3 8. in the alternative to the First Claim for Relief, as to its Sixth Claim for
4 Relief, actual damages in an amount to be proven at trial or statutory damages, plus
5 costs including reasonable attorney fees;

6 9. in the alternative to the First Claim for Relief, as to its Seventh Claim for
7 Relief, compensatory damages in an amount to be proven at trial;

8 10. in the alternative to the First Claim for Relief, as to its Eighth Claim for
9 Relief, compensatory damages in an amount to be proven at trial;

10 11. in the alternative to the First Claim for Relief, as to its Ninth Claim for
11 Relief, the amount to be proven at trial by which Lumen21 has been unjustly
12 enriched;

13 12. in the alternative to the First Claim for Relief, as to its Tenth Claim for
14 Relief, compensatory damages in an amount to be proven at trial;

15 13. in the alternative to the First Claim for Relief, exemplary damages for
16 Lumen21's willful and knowing infringement, theft, and misappropriation;

17 14. in the alternative to the First Claim for Relief, immediate and permanent
18 injunctive relief enjoining Lumen21 from using DiscoverOrg's trade secrets,
19 copyrighted materials, and misappropriated products or services;

20 15. in the alternative to the First Claim for Relief, an award of DiscoverOrg's
21 costs of suit, including the costs of experts and reasonable attorneys' fees as
22 permitted by law, for example pursuant to 18 U.S.C. § 1832 *et seq.*, RCW 19.108 *et.*
23 *seq.*, and 17 U.S. Code § 505;

24 16. an award of pre- and post-judgment interest; and

25 17. such other relief as the Court may deem just and equitable.

1 Dated: April 4, 2019

Respectfully submitted,

2 NEWMAN DU WORS LLP

3
4 s/ John Du Wors _____

5 s/ Nathan Durrance _____

6 John Du Wors, WSBA No. 33987

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